BRIEF IN SUPPORT OF PETITION.

Opinions of Courts Below.

The opinion of the Circuit Court of Appeals for the Seventh Circuit (R. p. 51) was rendered on May 3, 1944; 44 U. S. Tax Cases 9310. No opinion was rendered by the District Court for the Northern District of Illinois, Eastern Division. Judgment was rendered by said District Court (R. p. 37) on January 4, 1943.

Jurisdiction.

1. The date of the judgment to be reviewed is May 3, 1944; the petition for writ of certiorari is being presented before August 3, 1944.

2. The statutory provision which is believed to sustain the jurisdiction of this court is the Act of February 13, 1925 (C. 229; 43 Stat. 938) amending the Judicial Code, Section 240; Title 28 U. S. C. A., Section 347, and Rule 38 Sub-division (5) of the Rules of the Supreme Court.

3. The nature of the within case and the rulings of the Circuit Court are such as to bring the case within said jurisdictional provisions.

The case involves an important question of federal law which has not been and should be settled by the Supreme Court. The action was brought for refund of floor stocks taxes paid under the provisions of the Agricultural Adjustment Act of 1933 (48 Stat. 31) (R. pp. 2-3). A claim for refund of said taxes, which had been filed with the Commissioner of Internal Revenue under Title VII of the Revenue Act of 1936 (49 Stat. 1648) and Regulations 96 (R. pp. 7-13) was rejected by him on the

ground that he was without authority to consider the claim because petitioner had not submitted evidence in support of the claim for refund (R. pp. 23-24). A new claim for refund filed by petitioner (R. pp. 25-31) was rejected by the Commissioner on the ground that the same was a duplicate of the prior claim. The Circuit Court affirmed the judgment of the District Court dismissing the petitioner's complaint and ruled that there was no error in said dismissal, holding that the second claim was not a different claim as to constitute new grounds for the claim and thus start the running of the statute anew from the date of the disallowance thereof and that both claims for refund were insufficient (R. pp. 51-55).

Said rulings of the Circuit Court are in direct conflict with the decisions of the First Circuit and the Court of Claims on the issue as to whether the second claim was a new claim. Said decisions are listed in Paragraph 4 (A) *infra.*

Said rulings of the Circuit Court are in direct conflict with a decision of the Circuit Court of Appeals for the Third Circuit and with decisions of the Federal Courts in the Third, Fourth, Fifth, Sixth and Ninth Circuits on the question of sufficiency of the claim for refund and the necessity of the submission of evidence to the Commissioner. Said decisions are listed in Paragraph 4 (B) *infra.*

4. The cases believed to sustain said jurisdiction are as follows:

Pacific Mills v. *Nichols,* 72 F. (2d) 103 (C. C. A. 1st, 1934);

First Nat. Pictures v. *U. S.,* 32 Fed. Supp. 138 (Court of Claims 1940);

Detroit Trust Co. v. *U. S.,* 18 Fed. Supp. 776 (Court of Claims 1937);

Williams v. *U. S.*, 48 Fed. Supp. 647 (Court of Claims, 1943, cert. den. 10/11/43);

Sun-Herald Corporation v. *Duggan*, 15 Fed. Supp. 415 (S. D. N. Y. 1936);

Dinon v. *U. S.*, 37-1 U. S. T. C. 9149 (E. D. Pa. 1936);

Stephenson v. *Woodworth*, 39-1 U. S. T. C. 9469 (E. D. Mich. 1929);

Bethlehem Baking Co. v. *U. S.*, 129 F. (2d) 490 (C. C. A. 3rd, 1942);

Hutzler Bros. v. *U. S.*, 33 Fed. Supp. 801 (D. C. Md. 1940);

Bullock's Inc. v. *U. S.*, 43 Fed. Supp. 861 (S. D. Calif. 1941);

Ney, et al. v. *U. S.*, 33 Fed. Supp. 554 (W. D. Va. 1940);

Joe Hanna v. *U. S.*, 27 AFTR 1135 (W. D. Texas 1940);

Bricker Baking Co. v. *Rothensies, et al.*, 46 Fed. Supp. 742 (E. D. Pa. 1942);

Snead, Collector v. *F. H. Elmore*, 59 F. (2d) 312 (C. C. A. 5th, 1943);

Fidelity & Columbia Trust Co. v. *Lucas*, 7 F. (2d) 146 (D. C. Ky. 1925);

Paul Jones & Co. v. *Lucas*, 33 F. (2d) 907 (D. C. Ky. 1929) Affirmed 64 F. (2d) 1016 (C. C. A. 6th, 1933).

5. The questions here involved are substantial for the reason that many hundreds of cases for the refund of taxes paid under the Agricultural Adjustment Act of 1933, involving millions of dollars, are now pending in the Federal Courts. The questions as to the effect of the abandonment of a claim for refund and the filing of a new claim before the statute of limitations for the filing

of claims has expired, and as to the construction of the Revenue Act of 1936 and Regulations 96 concerning the necessity for submission of evidence to the Commissioner are involved in a great many of said cases.

The question as to the jurisdiction of the District Court over the action is also important and substantial.

Statement of Case.

This has already been stated in the preceding petition in "Summary Statement of Matter Involved" (pp. 1-3), which is hereby adopted and made a part of this brief.

Specification of Errors.

The Circuit Court erred in holding that:

1. The action was barred by Section 904 of the Revenue Act of 1936; refund is barred by Section 3774 of the Internal Revenue Code.

2. Plaintiff's claim for refund did not comply with Sections 902 and 903 of the Revenue Act of 1936, as amended, and Regulations 96; the District Court did not have jurisdiction of the action.

ARGUMENT.

Summary of Argument.

Certiorari should be granted for the reasons that:

POINT I.

THE CIRCUIT COURT'S DECISION IS IN DIRECT CONFLICT WITH THE DECISIONS OF THE FIRST CIRCUIT, COURT OF CLAIMS, AND DISTRICT COURTS IN OTHER CIRCUITS ON THE QUESTION AS TO WHETHER A CLAIM FOR REFUND, FILED AFTER A FIRST CLAIM FOR REFUND HAS BEEN WHOLLY REJECTED BY THE COMMISSIONER OF INTERNAL REVENUE, WITHOUT CONSIDERATION OF THE MERITS THEREOF, BUT BEFORE THE STATUTORY PERIOD FOR FILING CLAIMS HAS EXPIRED, IS A NEW CLAIM OR A DUPLICATE OF THE FIRST CLAIM.

POINT II.

THE CIRCUIT COURT'S DECISION IS IN DIRECT CONFLICT WITH THE DECISIONS OF THE THIRD CIRCUIT AND DISTRICT COURTS IN OTHER CIRCUITS ON THE QUESTION AS TO WHETHER SECTIONS 902 AND 903 OF THE REVENUE ACT OF 1936 AND REGULATIONS 96 REQUIRE THE SUBMISSION OF EVIDENCE TO THE COMMISSIONER OF INTERNAL REVENUE IN SUPPORT OF A CLAIM FOR REFUND OF TAXES PAID UNDER THE AGRICULTURAL ADJUSTMENT ACT OF 1933.

(a) The Circuit Court's decision is in direct conflict with the decisions of the Fifth and Sixth Circuits involving similar statutes and regulations, on the question as to whether the submission of evidence to the Commissioner of Internal Revenue is required in support of a claim for refund.

POINT III.

AN IMPORTANT AND SUBSTANTIAL QUESTION OF FEDERAL LAW IS INVOLVED WHICH HAS NOT BEEN AND SHOULD BE SETTLED BY THE SUPREME COURT.

POINT I.

The Circuit Court's decision is in direct conflict with the decisions of the First Circuit, Court of Claims, and District Courts in other circuits on the question as to whether a claim for refund, filed after a first claim for refund has been wholly rejected by the Commissioner of Internal Revenue, without consideration of the merits thereof but before the statutory period for filing claims has expired, is a new claim or a duplicate of the first claim.

The Circuit Court below held that the claim for refund involved in the action was not a new claim but was a duplicate of the original claim for refund previously filed by petitioner, that the action was commenced more than two years after the mailing of notice of disallowance of the original claim for refund, and is therefore barred by Section 904 of the Revenue Act of 1936.

Said decision is in direct conflict with the decision of the Circuit Court for the First Circuit in *Pacific Mills* v. *Nichols*, 72 F. (2d) 103 (C. C. A. 1st, 1934). The facts of said case are similar to those in the instant case. The original claim for refund was rejected by the Commissioner of Internal Revenue, without consideration thereof on its merits, and a second claim for refund revised by the addition of supporting data was filed within the statutory period for filing claims and before the statutory period for commencement of an action on the first claim had expired. The Court held in the cited case:

"* * * the Commissioner in fact never determined any questions raised by the first claim except one for special assessment. This appears from the correspondence. He said, as above quoted, '*Before consideration can be* given to your requests,' etc. This statement occurs in the letter accompanying the schedule showing what changes the Commissioner proposed to make in the plaintiff's income. *Clearly those changes are not, as the Government argues, and the District Judge in effect ruled, a decision on the claims* * * *. It was therefore still open to the plaintiff to file a new claim covering the items not passed upon; the time for filing claims not having expired.*

"In the present case, even if the Commissioner should be held to have decided every claim under the taxpayer's original petition, on March 26, 1927, when the second claim was filed, two years had not elapsed since the rejection of the first claim; *it was still open to the plaintiff to sue on the denial of the first claim* * * * *here the period of limitation had not run, at the time the second claim was filed.*" (Italics ours.)

The court in the latter case cited *Legal Opinion 1116 of the Solicitor of Internal Revenue*, C. B. III 350 (1924). Said Legal Opinion said in part:

"Where an original claim for refund of a tax is made * * * which claim is rejected *in toto* * * * claimant may make a new claim in the manner and form prescribed by the regulations, if the statutory period had not expired." (Headnote.)

In *First Nat. Pictures* v. *U. S.*, 32 Fed. Supp. 138 (Court of Claims 1940) the court held, as to a factual situation similar to that in the within case:

"We have therefore a case in which an insufficient claim was rejected on the ground above stated and suit not brought thereon within the limitations of bringing suit after a rejection. This fact, in our opinion, does not prevent the filing of a different claim which is sufficient, within the period in which such claims may be filed and bringing a suit within the statutory period after its rejection—all of which, in our opinion, the plaintiff has done.

" * * sole ground for rejection is that it was in substance and effect the same as the first claim. With this contention we do not agree.*

"We do not think the two claims can be regarded as one and the same, although they ask for the same amount of refund. They were based on altogether different theories and were supported by different facts. In other words, the grounds of the two claims were quite different. *The first claim was insufficient because, * * * it did not conform to the statute or the regulations, while there is no contention that the second claim is not valid in form."* (Italics ours.)

To the same effect see *Detroit Trust Co.* v. *U. S.*, 18 Fed. Supp. 776 (Court of Claims, 1937); *Sun-Herald Corporation* v. *Duggan*, 15 Fed. Supp. 415 (S. D., N. Y., 1936); *Dinon* v. *U. S.*, 37-1 U. S. T. C. 9149 (E. D., Pa., 1936); *Stephenson* v. *Woodworth*, 39-1 U. S. T. C. 9469 (E. D., Mich., 1939); *Williams, et al.* v. *U. S.*, 48 Fed. Supp. 647 (Court of Claims, 1943, cert. den. Oct. 11, 1943).

The authorities cited support petitioner's contention in the court below that the claim for refund involved in the action was a new claim, that it was within petitioner's power to abandon the original claim for refund which had been wholly rejected by the Commissioner of Internal Revenue without consideration of its merits, and file

a new claim within the statutory period for filing claims. The suit having been brought within two years of the mailing of the notice of disallowance "of that part of the claim to which such suit * * * relates" was timely commenced under Section 904 of the Revenue Act of 1936. (See Appendix.)

POINT II.

The Circuit Court's decision is in direct conflict with the decisions of the Third Circuit and District Courts in other circuits on the question as to whether Sections 902 and 903 of the Revenue Act of 1936 and Regulations 96 require the submission of evidence to the Commissioner of Internal Revenue in support of a claim for refund of taxes paid under the Agricultural Adjustment Act of 1933.

In *Bethlehem Baking Co.* v. *U. S.*, 129 F. (2d) 490 (C. C. A. 3rd, 1942), the Circuit Court thus stated the question in the case:

> "The principal question in this case is whether the matter submitted by the plaintiff taxpayer to the Commissioner of Internal Revenue in support of a claim for refund of taxes paid under the Agricultural Adjustment Act of 1933 complied sufficiently with the requirements of Title VII, Section 902 of the Revenue Act of 1936, c. 690, 49 Stat. 1648 (providing for refund of such taxes), so as to preserve the plaintiff's standing to sue for the refund following the Commissioner's disallowance of the claim. * * * "

The Court in the cited case ruled that all evidence relied upon by the taxpayer did not have to be submitted to the Commissioner. It held:

> "In Section 903 of the Revenue Act of 1936 there is the additional provision that 'All evidence relied upon in support of such claim shall be clearly set forth under oath'. * * * *Was the requirement in Section 903 intended to impart finality to the decisions of the Commissioner* with respect to claims for refund by * * * *withdrawing jurisdiction from the courts in such regard because the Commissioner was not satisfied that all evidence relied upon in support of the claim had been clearly set forth under oath?* We think not. Section 903 appears to be in furtherance of the administration of Section 902. It indicates no legislative intent to give greater finality to the decisions of the administrative officer then did Section 902. * * * (Italics ours.)

The Court in the latter case cited *Hutzler Bros.* v. *U. S.*, 33 Fed. Supp. 801 (D. C., Md., 1940). In the said case, the Government's contention was similar to that made in the instant case. It is thus stated by the Court:

> "It is contended that by this provision the plaintiff was required to set forth under oath all of the evidence upon which it relied as a condition precedent to the allowance of any claim for refund, and that no suit may be maintained in this Court by plaintiff unless it alleges,—as it did not do,—as an essential part of its right of action, that it had presented to the Commissioner all the available evidence bearing upon its right to refund. * * * "

The Court held as to said contention:

> " * * * We find this position of the Government to be without merit. Where a claim has been rejected by the Commissioner and such a fact is

alleged in the complaint, no further allegation is necessary for the maintenance of a suit for refund; and in such a suit a plaintiff is not limited to the same evidence produced before the Commissioner. *The intent of the statute, reasonably interpreted from the language employed and above quoted, is to bar consideration of claims merely on informal statements or memoranda,* and to surround the presentation of claims with full verification, but it is not intended that a claimant who produces before the Commissioner certain evidence is forever thereafter barred from introducing further evidence in resorting to a Court proceeding for refund,—a right which is expressly given by Section 905 of the Act." (Italics ours.)

To the same effect as the two cited cases, see:

Bullock's Inc. v. *U. S.*, 43 Fed. Supp. 861 (S. D., Calif., 1941);

Ney, et al. v. *U. S.*, 33 Fed. Supp. 554 (W. D., Va., 1940);

Joe Hanna v. *U. S.*, 27 AFTR 1135 (W. D., Texas, 1940);

Bricker Baking Co. v. *Rothensies, et al.*, 46 Fed. Supp. 742 (E. D., Pa., 1942).

The Circuit Court in the instant case held that "both claims filed by appellant were wholely inadequate and insufficient * * * " (R. p. 51). Said decision, it is submitted, is in direct conflict with the decisions above set forth.

(a) The Circuit Court's decision is in direct conflict with the decisions of the Fifth and Sixth Circuits involving similar statutes and regulations on the question as to whether submission of evidence to the Commissioner

of Internal Revenue is required in support of a claim for refund.

Petitioner's authority for reference to other statutes and regulations concerning other claims for refund is found in the *Congressional Committee Report on the Revenue Act of 1936* (C. B. 1939-1, Part 2). The purpose of said statute is thus stated (pp. 699-700):

> "The revision of the provisions of section 21 (d) contained in Title VII adheres to the fundamental principle of equity applicable in respect to claims for refund, namely, that the claimant secure a refund only with respect to the amount of tax of which he bore the economic burden. However, the procedure in the handling of these claims has been modified so as to diminish in so far as possible the administrative burden involved in passing on them. The greater number of claims which may be filed relate to claims for compensating taxes and floor stock taxes. In these cases the issue of fact as to whether or not the claimant bore the economic burden of the tax will be relatively simple. *The bill therefore proposes that such claims shall be handled in the same manner as any other claims for refund* under existing law. The claimant will merely present his claim to the Bureau of Internal Revenue, and it will be passed on without formal hearing. If the claimant is dissatisfied with the decision of the Commissioner, he will then have recourse to the district court or the Court of Claims." (Italics ours.)

The manner in which "any other claims for refund under existing law" was handled is illustrated in the following cases; petitioner's interpretation of Section 903 of the Revenue Act of 1936 here involved, is supported

by these cases which place a similar interpretation on similar statutes concerning "other claims for refund".

In *Paul Jones & Co.* v. *Lucas*, 33 F. (2d) 907 (D. C., Ky., 1929), affirmed 64 F. (2d) 1016, the Revenue Act of 1926 (Sec. 1113-a) and Regulations 69 (Art. 1304) were involved. The Court held:

> "The provision contained in Article 1304 of Treasury Regulations 69, *supra*, to the effect that 'all facts relied upon in support of the claim should be clearly set forth in detail under oath' is a proper exercise of the power delegated to the Commissioner of Internal Revenue to make rules and regulations for the enforcement of the act in question. * * * "
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> "Fairly construed, the language of the regulations just quoted *does not require all the evidence upon which a taxpayer relies to be presented to the Commissioner.* It simply requires the fact or reasons for the alleged illegality of the tax to be presented to the Commissioner, leaving the taxpayer entirely free, if he fails to secure relief at the hands of the Commissioner, to adduce, in a suit in court, new and additional evidence in support of the fact or reasons relied upon to establish the illegality of the tax." (Italics ours.)

In *Snead, Collector* v. *F. H. Elmore*, 59 F. (2d) 312 (C. C. A. 5th, 1932), the statutes and regulations involved were 26 U. S. C. A. 156 and Regulations 45, Article 1036. The Court stated:

> "The regulations then in force, No. 45, Art. 1036, require that 'all the facts relied upon in support of the claim shall be clearly set forth under oath' * * *. *This does not mean that the claim for refund must have contained all the evidence or argu-*

> *ment* that is offered in the suit, but it must have indicated not only the amount claimed but the substantial grounds on which illegality is asserted and the general facts supporting the grounds. * * * "

In *Fidelity & Columbia Trust Co.* v. *Lucas*, 7 F. (2d) 146 (D. C., Ky., 1925), the Court stated as follows:

> " * * * in suits to recover internal revenue taxes erroneously or illegally assessed and collected, * * * Congress has not committed the final decision in these matters to the Commissioner of Internal Revenue, or to any other executive or ministerial officer. On the contrary, *jurisdiction to finally determine such matters is conferred upon the Judicial Dept.*, provided the taxpayer has first taken all the steps required by law to be taken before appealing to the court. * * *
>
> "In view of these statutory provisions (Section 3226 of the Revised Statutes, among others) and the authorities referred to, *this court is satisfied that it has jurisdiction to try the question of the plaintiff's tax liability in this case de novo, without in any way being limited to the evidence heard by the Commissioner, and unprejudiced by any action he may have taken in the matter.* * * * " (Italics ours.)

Section 903 of the Revenue Act of 1936 and Articles 201 and 202 of Regulations 96 (see Appendix) involved in the instant case are similar in their requirements to the statute and regulations involved in *Paul Jones & Co.* v. *Lucas*, and *Snead, Collector* v. *F. H. Elmore, supra.* The Circuit Court herein found in the case of *New York Handkerchief Mfg. Co.* v. *The United States of America*, 44 U. S. T. C. 9295, decided April 25, 1944, as contended

by plaintiff-appellant there, that the regulations involved in the two cited cases "do not require that the evidence on which the claimant relied be presented to the Commissioner".

It is submitted that the said finding is inconsistent with the Court's decision herein (R. p. 53) based on *New York Handkerchief Mfg. Co.* v. *The United States of America, supra,* that the claim for refund was insufficient because of the failure to submit evidence to the Commissioner, in view of the similarity in statutory requirements; that said decision defeats the purpose of said statute as stated in the Congressional Committee Report, *supra,* that claims for refund "shall be handled in the same manner as any other claims for refund under existing law", and that said decision is in direct conflict with the decisions in the two cited cases.

POINT III.

An important and substantial question of Federal Law is involved which has not been and should be settled by the Supreme Court.

Respondent had moved to dismiss the complaint on the ground, in part, that the District Court "is without jurisdiction to hear and determine upon the merits of the matters alleged in the complaint * * *" (R. p. 4) for the reason that no evidence had been submitted to the Commissioner of Internal Revenue. The Circuit Court, without ruling specifically on the question of jurisdiction, has ruled, in effect, by its affirmance of the dismissal of the complaint, that the District Court has no jurisdiction of the action.

Whether the submission of evidence to the Commissioner of Internal Revenue is a condition precedent to the District Court's jurisdiction of the action so that

failure to submit such evidence would oust the court of jurisdiction is a substantial question of federal law and of the utmost important and should be settled by the Supreme Court.

The position of the court below that evidence must accompany a Title VII floor stocks refund claim in order to provide jurisdiction in the District Court is untenable. For example, in the instant case, four employees submitted affidavits under oath (in the second claim) attesting that sales prices were not increased after August 1, 1933, and that the petitioner absorbed the tax burden. It is clear that if these affidavits had been submitted as the sole support of an independent claim under normal circumstances (the claim for refund having been rejected and a suit having been timely filed) the Federal District Court would be considered as having jurisdiction; yet, it is also clear that these affidavits and all similar material are not truly "evidence" as the word evidence is understood in a court of law.

All of said employees being alive, available and able to testify, their affidavits would be *inadmissible in evidence*. Thus we are brought to the incongruous result that in practically no case can the "evidence" be submitted to the Commissioner because evidence in the legal sense is presented in a court room ordinarily through a living witness. As a result, it seems plain that what Congress had in mind was the submission of a summary of the *essential facts* upon which a claimant relied, when it used the statutory language in Section 903, as follows: "All evidence relied upon in support of such claim shall be clearly set forth under oath." (See Appendix.)

The untenable position of the court below is again demonstrated by two obvious examples. In almost all of these Agricultural Adjustment Act refund claims, the significant records consist of the purchase invoices, the du-

plicate sales invoices, general ledgers, operating and income data and similar material. Under the Federal law relating to admissibility of business records, these purchase and duplicate sales invoices normally would be submitted in evidence through a competent witness. Yet it would stultify the operations of almost all businesses if all of these records had to be sent to the Commissioner, since these records are constantly required in the ordinary course of business. Had the statute intended to deprive American taxpayers of their general ledgers and other vital records by an alleged requirement that the same must be submitted with any large or small refund claim, its language would have so provided, unequivocally and expressly, because such a requirement would be a radical innovation in American tax law. (As a matter of fact, the submission of all such data to the Commissioner would embarrass the Treasury Department and create a warehousing problem of quite some magnitude.)

It should also be borne in mind that records once submitted to the Treasury Department generally are not returned and therefore these records would be irrevocably lost to taxpayers. The absence of such records would delay, hinder or defeat the claims of others in controversies or problems wholly unrelated to Agricultural Adjustment Act matters. Nor is it simple to suggest that these records be photostated or copied, since even a small business would have thousands of these purchase invoices, duplicate sales invoices, inventory sheets, etc. It would be an intolerable burden upon the normal taxpayer to compel him to spend hundreds or thousands of dollars to reproduce and submit these records, when it has been a long standing practice in Federal tax work for the Commissioner to send agents to examine such records at the place of business of the taxpayer. In actual practice, in cases such as the instant one, the Commissioner has sent

out field agents and examiners to the places of business of most claimants, which in itself shows that the theoretical or actual administrative inconvenience to the Commissioner alleged to exist if claimants do not submit all the "evidence" or facts is infinitesimal.

In almost every Title VII floor stocks tax case brought to the Federal courts the Commissioner has raised this same special defense that the court is without jurisdiction because the claimant failed to submit all the evidence. One need only examine some of the consequences to see how pernicious is this new doctrine in Federal tax practice; most important, it requires *two* trials in the Federal District Court instead of *one*. If the Commissioner's view is to prevail, then in every tax case of this type a motion to dismiss for lack of jurisdiction will inevitably be converted into a pre-trial or separate trial, at which the District Court Judge will have to hear and review all the evidence in order to determine whether enough evidence has been submitted to *establish jurisdiction*. If a claimant successfully runs this gauntlet, then at a later time a second trial on the merits will be held before the same District Court to determine the outcome of the case. The above result is so plainly unjust and a departure from the recently liberalized Federal rules of practice that the Supreme Court should not indirectly stamp its approval thereof through a denial of certiorari.

Further, there are many hundreds of cases such as the instant one still pending in the Federal Courts. Recovery will be denied claimant in some circuits for the same reason that recovery was here denied, whereas other claimants in similar factual situations, but in different circuits, will recover. If certiorari is here granted and the ultimate guiding rule in this type of case is announced by the Supreme Court, there will be uniformity of decision in the several circuits; thus, there will be no

advantage afforded to some claimants solely by reason of their geographical location; further, many claimants will then be in a position to determine whether to proceed with or discontinue their actions, with a resultant saving of time and expense for the courts, counsel and litigants.

It is therefore respectfully submitted that this case is one calling for an exercise by this Court of its supervisory powers, by granting a writ of certiorari and thereafter reviewing and reversing said decision.

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